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TRYSTAN LEMUS and AUSTIN BURLESON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

TRYSTAN LEMUS and AUSTIN
BURLESON, individually and on behalf
of aggrieved employees,

Plaintiffs,

vs.

ON THE GROUND INC., a California
corporation, LAWRENCE T. CIAFFONE, an
individual; and DOES 1-20, inclusive,

Defendants.

) Case No. **22STCV35369**

) **COMPLAINT FOR DAMAGES**

-) **1. FAILURE TO PAY**
-) **COMPENSATION FOR ALL**
-) **WAGES OWED AND MINIMUM**
-) **WAGE VIOLATIONS (CAL. LABOR**
-) **CODE §§ 216, 1194, 1194.2, 1197,**
-) **1197.1)**
-) **2. FAILURE TO PAY OVERTIME**
-) **COMPENSATION (CAL. LABOR**
-) **CODE §§ 510, 1194)**
-) **3. BREACH OF CONTRACT**
-) **4. FAILURE TO PROVIDE**
-) **ACCURATE ITEMIZED**
-) **STATEMENTS (CAL. LABOR CODE**
-) **§ 226)**
-) **5. FAILURE TO PAY ALL WAGES BY**
-) **THE APPROPRIATE PAY PERIOD**
-) **(CAL. LABOR CODE § 204)**
-) **6. WAITING TIME PENALTIES (CAL.**
-) **LABOR CODE § 203)**
-) **7. FAILURE TO REIMBURSE ALL**
-) **BUSINESS EXPENSES (CAL.**
-) **LABOR CODE § 2802)**

DEMAND FOR JURY TRIAL

1 Plaintiffs TRYSTAN LEMUS and AUSTIN BURLESON (“Plaintiffs”), individually and
2 on all others similarly situated, complain and allege on information and belief the following
3 against ON THE GROUND INC., a California corporation ("ON THE GROUND"),
4 LAWRENCE T. CIAFFONE, and Does 1-20 (collectively "Defendants"):

5 **INTRODUCTION**

6 1. ON THE GROUND provides grass roots advocacy services such as door to door
7 canvassing, generating constituent phone calls, collecting signatures from registered voters,
8 validation and data management, voter fraud surveillances, and field research.

9 2. Plaintiffs’ First through Seventh Causes of Action are brought in their individual
10 capacity.

11 3. Plaintiffs’ Eighth Cause of Action is a representative action brought by Plaintiffs
12 each as an aggrieved employee and private attorney general on behalf of himself, the State of
13 California, and other current and former employees of Defendants against whom one or more of
14 the alleged violations was committed (hereinafter collectively referred to as the “Aggrieved
15 Employees”) pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code
16 sections 2698, et seq. (“PAGA”), *et seq.*

17 4. During the time period relevant to this case, Defendants failed to pay Plaintiffs
18 and the Aggrieved Employees for all of the work they performed, including but not limited to the
19 following: (1) time spent traveling between ON THE GROUND’s office and their assigned job
20 sites; (2) time spent after the end of their scheduled shifts in order to complete speaking with
21 potential voters and obtaining signatures; (3) time spent returning signatures to ON THE
22 GROUND’S office, filling out paperwork, and accounting for signatures obtained from voters;
23 (4) time spent working during meal periods which were automatically deducted from their time
24 records; and (5) time spent on tasks such as reading the company news feed and other work
25 related tasks while “off the clock” outside of their scheduled hours. Defendants also prohibited
26 Plaintiffs and the Aggrieved Employees from recording any time worked outside of their
27 scheduled hours.

28 5. During the time period relevant to this case, Defendants agreed to pay Plaintiffs,

1 and the Aggrieved Employees non-discretionary performance bonuses as part of their
2 compensation structure. Defendants failed to pay Plaintiffs and the Aggrieved Employees all
3 additional wages owed under this bonus structure.

4 6. During the time period relevant to this case, Defendants additionally agreed to pay
5 Plaintiffs and the Aggrieved Employees non-discretionary “referral” bonuses as part of their
6 compensation structure for referring workers to work for Defendants. Defendants failed to pay
7 Plaintiffs and the Aggrieved Employees all additional wages owed under this bonus structure.

8 7. Throughout the time period covered by this case, Plaintiffs and the Aggrieved
9 Employees were not paid all the overtime wages they earned by virtue of the fact that the tasks
10 described in Paragraph 4 above often caused Plaintiffs and the Aggrieved Employees to work
11 more than 8 hours in a day (or 40 hours in week) and, accordingly, should have been reimbursed
12 at the overtime rate. In addition, even on the rare occasions overtime compensation was paid,
13 Defendants failed to include all applicable remuneration (including, without limitation, non-
14 discretionary bonuses) in Plaintiffs the Aggrieved Employees’ regular rate of pay for purposes of
15 calculating overtime compensation, resulting in a further failure to pay all overtime wages owed.

16 8. As a result of its unlawful policies and practices, Defendants failed to accurately
17 record all time actually worked by Plaintiffs and the Aggrieved Employees, and failed to provide
18 accurate wage statements showing the actual gross wages earned and total hours worked by
19 Plaintiffs and the Aggrieved Employees. As such, Plaintiffs and the Aggrieved Employees allege
20 wage and hour violations, including inaccurate wage statements and waiting time penalties, which
21 are largely derivative of the failure to pay minimum wage and failure to pay overtime claims.

22 9. This action also alleges that Defendants failed to reimburse Plaintiffs and the
23 Aggrieved Employees for all business-related expenses pursuant to California Labor Code
24 Section 2802, including but not limited to the use of their own cell phones and vehicles for work-
25 related purposes.

26 10. The violations described in this lawsuit entitle Plaintiffs unpaid wages, including
27 minimum wage and overtime pay, unpaid reimbursement, all applicable statutory and civil
28 penalties, attorneys’ fees, costs, and interest.

11. With respect to the Eighth Cause of Action pursuant to PAGA, Plaintiffs intend to pursue a representative pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, et seq. (“PAGA”) to recover civil penalties on behalf of themselves, the State of California, and the Aggrieved Employees.

JURISDICTION AND VENUE

12. The Court has personal jurisdiction over ON THE GROUND because it is a resident of and/or doing business in the state of California. ON THE GROUND is subject to personal jurisdiction as a California corporation conducting substantial and continuous commercial activities in California. This case arises from Defendants' wrongful conduct in California, where Defendants employed Plaintiffs and the Aggrieved Employees (defined below). The monetary damages and civil penalties sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

13. The Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

14. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in Los Angeles County. In addition, Defendants employed aggrieved employees in Los Angeles County and some of the harms occurred in Los Angeles County.

PARTIES

15. Plaintiffs TRYSTAN LEMUS and AUSTIN BURLESON are individuals residing in the State of California, and were employed by Defendant as non-exempt employees during the time period covered by this lawsuit.

16. Plaintiffs are informed, believe, and allege that ON THE GROUND has been doing business in California at all relevant times. ON THE GROUND is a California corporation which is headquartered in Whittier, California.

17. Plaintiff is informed and believes, and thereon alleges that at all times relevant

1 hereto, Defendant LAWRENCE T. CIAFFONE (“CIAFFONE”) and Defendants DOES 1-10
2 each was a resident of the State of California and worked as a managing agent and/or owner of
3 Defendant ON THE GROUND. In that capacity, Defendant CIAFFONE and Defendants DOES
4 1-10 (collectively as “Individual Defendants”) each enforced and contributed to Defendants’
5 policies and practices that resulted in Plaintiffs and similarly situated employees not being paid
6 correctly pursuant to the requirements of California Labor Code and other related violations as
7 described herein. Plaintiffs further allege on information and belief that Individual Defendants
8 caused and/or ratified the Labor Code violations subject of this complaint, so as to make them
9 each individually liable pursuant to Labor Code Sections 558 and 558.1

10 18. Plaintiffs are informed, believe, and allege that DOES 11-20 each is a business
11 doing business in California at all relevant times. ON THE GROUND and DOES 11-20 are
12 collectively referred to as ENTITY DEFENDANTS.

13 19. The true names and capacities of defendants named as Does 1-20, inclusive,
14 whether individual, corporate, associate, or otherwise, are unknown to Plaintiffs, who therefore
15 sue such defendants by such fictitious names. Plaintiffs will amend this Complaint to show true
16 names and capacities when they have been determined.

17 20. All references made to Defendants herein are intended to include the named
18 Defendant as well as the Doe Defendants. Each of the fictitiously named Doe Defendants is
19 responsible in manner for the occurrences alleged and proximately caused Plaintiffs’ damages as
20 well as the Labor Code violations described herein.

21 21. Industrial Wage Commission (“IWC”) Order Number 4-2001 defines an
22 “employer” as any “person as defined in Section 18 of the [California] Labor Code, who directly
23 or indirectly, or through an agent or any other person, employs or exercises control over the
24 wages, hours, or working conditions of any person.” Plaintiffs are informed, believe, and allege
25 that Defendants directly, indirectly, or acting through the agency of each other, employ or
26 exercise control over the wages, hours, or working conditions of Plaintiffs and the Aggrieved
27 Employees. Specifically, Defendants direct and control, with the assistance of or through the
28 other named Defendants, the terms and conditions of the employment of Plaintiffs and the

1 Aggrieved Employees. Accordingly, Defendants are deemed to be the employers of Plaintiffs and
2 the Aggrieved Employees.

3 **FACTS COMMON TO ALL CAUSES OF ACTION**

4 22. Plaintiff TRYSTAN LEMUS was employed by Defendants as a field worker for
5 about 3 months until approximately April 20, 2022.

6 23. Plaintiff AUSTIN BURLESON was employed by Defendants as a field worker
7 for about 3 months until approximately April 20, 2022.

8 24. During the time period relevant to this action, Defendants required Plaintiffs and
9 the Aggrieved Employees to obtain signatures either outside a retail store location and/or door to
10 door at a residential neighborhood.

11 25. During the time period relevant to this case, Plaintiffs and the Aggrieved
12 Employees were required to use their own cell phones to perform work-related duties, including
13 but not limited to communicating with supervisors and managers, using a company required
14 application to record and submit their time records, reading company “news feeds” from the
15 required online application. Defendants failed to reimburse Plaintiffs and the Aggrieved
16 Employees for this expense.

17 26. During the time period relevant to this case, Plaintiffs and the Aggrieved
18 Employees were required to use their own vehicles to perform work-related duties, including but
19 not limited to driving between jobsites to obtain signatures and traveling between ON THE
20 GROUND’s office and jobsites. Defendants failed to reimburse Plaintiffs and the Aggrieved
21 Employees for this expense.

22 27. During the time period relevant to this case, Plaintiffs and the Aggrieved
23 Employees were required to report to ON THE GROUND’s office in order to obtain their
24 assignments. Plaintiffs and the Aggrieved Employees would the use their personal vehicles to
25 travel to their assigned jobsite. Plaintiffs and the Aggrieved Employees were not paid for the time
26 spent traveling from ON THE GROUND’s office to their assigned job site.

27 28. During the time period relevant to this case and the Aggrieved Employees were
28 required to log-out before leaving their assigned job site. After logging out for the day, Plaintiffs

1 and the Aggrieved Employees were required to return to ON THE GROUND's office to fill out
2 papers and account for signatures they had obtained on some days. Defendants failed to maintain
3 any records of the time Plaintiffs and the Aggrieved Employees spent on these tasks. Defendants
4 further failed pay any wages whatsoever to the time spent performing these end of day tasks.

5 29. During the time period relevant to this case, Plaintiffs and the Aggrieved
6 Employees were required to log out before their 8th hour of work in order to avoid recording
7 overtime. If employees failed to comply with this requirement, they would face disciplinary
8 action, up to and including termination.

9 30. Due to the nature of their jobs, it was extremely difficult for Plaintiffs and the
10 Aggrieved Employees to manage or anticipate how long it would take to finish speaking with
11 their last voter before obtaining a signature. As a result, Plaintiffs and the Aggrieved Employees
12 often worked over 8 hours in a day in order to complete their work for the day, but were
13 effectively forced to log out at the 8th hour in order to avoid being disciplined under Defendant's
14 policy of prohibiting employees for recording overtime.

15 31. During the time period relevant to this case, Defendants promised to pay Plaintiffs,
16 and the Aggrieved Employees non-discretionary performance bonuses as part of their
17 compensation structure ("Employee Bonus Structure"). Under the Employee Bonus Structure,
18 Defendants agreed to pay Plaintiffs and the Aggrieved Employees non-discretionary bonuses
19 every two weeks if they satisfied certain performance requirements. A true and correct copy of
20 the Employee Bonus Structure signed by Plaintiff TRYSTAN LEMUS is attached hereto as
21 "**Exhibit 1**", the terms of which are incorporated hereto by reference.

22 32. During the time period relevant to this case, Defendants promised to pay Plaintiffs,
23 and the Aggrieved Employees non-discretionary "referral" bonuses for referring workers to work
24 for Defendants ("Referral Bonus Structure"). Under the Referral Bonus Structure, Defendants
25 agreed to pay Plaintiffs and the Aggrieved Employees non-discretionary bonuses if they satisfied
26 certain employee referral requirement. A true and correct copy of the Referral Bonus Structure
27 posted by Defendants on Defendants' company online application in 2022 is attached hereto as
28 "**Exhibit 2**", the terms of which are incorporated hereto by reference.

1 33. Plaintiffs and the Aggrieved Employees continued to work for Defendants in
2 reliance of the Employee Bonus Structure and Referral Bonus Structure (collectively as “Bonus
3 Structures”). Notwithstanding the promises made by Defendants in the Bonus Structures,
4 Defendants routinely failed to pay Plaintiffs and the Aggrieved Employee all additional wages
5 promised and owed as part of the Bonus Structures including but not limited to the non-
6 discretionary bonus and referral bonus.

7 34. During the time period relevant to this case, Plaintiffs and the Aggrieved
8 Employees have not been paid all the minimum and overtime wages for all hours worked. In
9 addition, Defendants failed to include all applicable remuneration (including, without limitation,
10 non-discretionary bonuses and performance pay) in Plaintiffs and the Aggrieved Employees’
11 regular rate of pay for purposes of calculating overtime compensation, resulting in a further
12 failure to pay all overtime wages owed.

13 35. During the time period relevant to this case, Defendants’ policies and practices
14 described herein resulted in inaccurate reporting of time and inaccurate wage statements. The
15 wage statements do not show the correct total hours worked, the correct gross pay earned, and the
16 correct net wages earned, among other deficiencies. This causes injury because it makes it more
17 difficult for Plaintiffs and the Aggrieved Employees to determine what compensation they are
18 owed but were not paid.

19 36. Plaintiffs and the Aggrieved Employees were also not provided with all wages due
20 upon each pay period and upon termination or resignation. The failure to pay all wages upon
21 termination or resignation was willful and not the result of inadvertence or mistake. This is
22 prohibited practice in California.

23 37. Overall, Defendants’ violations of the law were willful and done according to
24 Defendants’ established policies and procedures, as applicable to Plaintiffs and the Aggrieved
25 Employees.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY COMPENSATION FOR WAGES OWED AND MINIMUM WAGE**
3 **VIOLATIONS**

4 **(Cal. Lab. Code §§ 204, 216, 1194, 1194.2, 1197, 1197.1, 1198)**

5 **By Plaintiffs against All Defendants.**

6 38. Plaintiffs reallege and incorporate by reference each and every allegation
7 contained in the preceding paragraphs as though fully stated here.

8 39. Plaintiffs bring this action to recover unpaid compensation for all hours worked,
9 defined by the IWC as the time during which an employee is subject to the control of an
10 employer, including all the time the employee suffers or is permitted to work, whether or not
11 required to do so.

12 40. Defendants' conduct described in this Complaint violates California Labor Code
13 Sections 204, 216, 1194, 1194.2, 1197, 1197.1 and 1198, among other things.

14 41. Defendants failed to pay Plaintiffs minimum wages for all of the actual hours
15 worked.

16 42. Plaintiffs entitled to recover the unpaid balance of compensation Defendants owes
17 Plaintiffs, plus interest on that amount, liquidated damages pursuant to California Labor Code
18 Section 1194.2, reasonable attorney fees, and costs of this suit pursuant to California Labor Code
19 Section 1194.

20 43. Plaintiffs are also entitled to liquidated damages pursuant to statute.

21 44. Plaintiffs allege that during the relevant statutory period, Individual Defendants
22 were the highest-ranking management employees of ENTITY DEFENDANTS in California.
23 Plaintiffs further allege in that capacity, Individual Defendants were in their respective individual
24 capacities an "other person acting on behalf of an employer" and managing agents of ENTITY
25 DEFENDANTS, who exercised substantial independent authority and judgment, which ultimately
26 resulted in the enforcement of the wrongful corporate policies, which caused wage and hour
27 violations. Accordingly, Plaintiffs further allege that, pursuant to Labor Code §§ 558, 558.1,
28 Individual Defendants are liable to the same degree as ENTITY DEFENDANTS for the

violations as alleged in this cause of action.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

(Cal. Lab. Code § 510, 1194)

By Plaintiffs against All Defendants.

45. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully stated here.

46. Plaintiffs bring this action to recover unpaid compensation for all hours worked, defined by the IWC as the time during which an employee is subject to the control of an employer, including all the time the employee suffers or is permitted to work, whether or not required to do so.

47. Defendants' conduct described in this Complaint violates California Labor Code Sections 510 and 1194, among other sections.

48. Plaintiff worked for Defendants in excess of 8 hours in a day during the relevant time period.

49. Defendants failed to fully compensate Plaintiffs for all wages earned, including overtime wages. Defendants further failed to include all applicable remuneration (including, without limitation, non-discretionary bonuses and performance pay) in Plaintiffs regular rate of pay for purposes of calculating overtime compensation, resulting in a further failure to pay all overtime wages owed.

50. Plaintiffs are informed and believe and allege that the failure of Defendants to fully compensate them for all wages earned and overtime work was willful, purposeful, and unlawful and done in accordance with the policies and practices of Defendants' operations.

51. Plaintiffs are entitled to recover the unpaid balance of compensation Defendants owe Plaintiffs, plus interest on that amount, liquidated damages pursuant to California Labor Code Section 1194.2, reasonable attorney fees, and costs of this suit pursuant to California Labor Code Section 1194.

52. Plaintiffs are also entitled to liquidated damages pursuant to statute.

53. Plaintiffs allege that during the relevant statutory period, Individual Defendants were the highest-ranking management employees of ENTITY DEFENDANTS in California. Plaintiffs further allege in that capacity, Individual Defendants were in their respective individual capacities an “other person acting on behalf of an employer” and managing agents of ENTITY DEFENDANTS, who exercised substantial independent authority and judgment, which ultimately resulted in the enforcement of the wrongful corporate policies, which caused the wage and hour violations. Accordingly, Plaintiffs further allege that, pursuant to Labor Code §§ 558, 558.1, Individual Defendants are liable to the same degree as ENTITY DEFENDANTS for the violations as alleged in this cause of action.

THIRD CAUSE OF ACTION

BREACH OF CONTRACT

By Plaintiffs against ENTITY DEFENDANTS only

54. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully stated herein.

55. As set forth above, Defendants promised to pay Plaintiffs non-discretionary performance bonuses as part of their Employee Bonus Structure.

56. As set forth above, Defendants promised to pay Plaintiffs referral bonuses.

57. Plaintiffs continued to work for Defendants in reliance of the Bonus Structures.

58. Plaintiffs fully performed all terms of the Bonus Structures and all conditions required by the them.

59. Defendants breached the Bonus Structures by failing to pay Plaintiffs all additional wages and compensations owed to them under the Bonus Structures.

60. As a direct and proximate cause of Defendants' breach of the Bonus Structures, Plaintiffs have has suffered monetary damages, in an amount subject to proof at trial.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code § 226)

By Plaintiffs against All Defendants.

1 61. Plaintiffs reallege and incorporate by reference each and every allegation
2 contained in the preceding paragraphs as though fully stated here.

3 62. Defendants failed to provide Plaintiffs with accurate itemized statements as
4 required by California Labor Code Section 226 due to Defendants' failure to compensate for all
5 time actually worked. As a result, the wage statements do not show the correct total hours
6 worked, the correct gross pay earned, and the correct net wages earned, among other deficiencies.

7 63. Plaintiffs are informed, believes, and allege that the failure of Defendants to
8 provide accurate itemized wage statements was knowing and intentional have suffered injury as a
9 result of Defendants' actions in this regard in that they must expend additional time and incur
10 expenses that otherwise would not have been expended or incurred in order to determine the
11 amount of wages they are owed but were never paid. As a result, Plaintiffs are entitled to recover
12 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
13 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
14 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and are entitled
15 to an award of costs and reasonable attorney fees.

16 64. Plaintiffs allege that during the relevant statutory period, Individual Defendants
17 were the highest-ranking management employees of ENTITY DEFENDANTS in California.
18 Plaintiffs further allege in that capacity, Individual Defendants were in their respective individual
19 capacities an "other person acting on behalf of an employer" and managing agents of ENTITY
20 DEFENDANTS, who exercised substantial independent authority and judgment, which ultimately
21 resulted in the enforcement of the wrongful corporate policies, which caused the wage and hour
22 violations. Accordingly, Plaintiffs further allege that, pursuant to Labor Code §§ 558, 558.1,
23 Individual Defendants are liable to the same degree as ENTITY DEFENDANTS for the
24 violations as alleged in this cause of action.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD**

3 **(Cal. Lab. Code § 204)**

4 **By Plaintiffs against All Defendants.**

5 65. Plaintiffs reallege and incorporate by reference each and every allegation
6 contained in the preceding paragraphs as though fully stated here.

7 66. During the relevant time period, Labor Code Section 204 applied to Defendants'
8 employment of Plaintiffs. At all relevant times, California Labor Code Section 204 provided that
9 all wages earned by any employee, such as Plaintiffs, in any employment between the first (1st)
10 and fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon
11 termination of an employee, are due and payable between the sixteenth (16th) and twenty-sixth
12 (26th) day of the month during which the work was performed. Furthermore, at all relevant times,
13 California Labor Code Section 204 provides that all wages earned by any employee, such as
14 Plaintiffs, in any employment between the sixteenth (16th) and the last day, inclusive, of any
15 calendar month, other than those wages due upon termination of an employee, are due and
16 payable between the first (1st) and tenth (10th) day of the following month.

17 67. Defendants failed to pay Plaintiffs for all hours worked.

18 68. Defendants failed to pay Plaintiffs for all wages earned, and, therefore, violating
19 California Labor Code Section 204. Accordingly, Plaintiffs are entitled to recover all damages,
20 penalties, and other remedies available for violation of California Labor Code Section 204.

21 69. Plaintiffs allege that during the relevant statutory period, Individual Defendants
22 were the highest-ranking management employees of ENTITY DEFENDANTS in California.
23 Plaintiffs further allege in that capacity, Individual Defendants were in their respective individual
24 capacities an "other person acting on behalf of an employer" and managing agents of ENTITY
25 DEFENDANTS, who exercised substantial independent authority and judgment, which ultimately
26 resulted in the enforcement of the wrongful corporate policies, which caused the wage and hour
27 violations. Accordingly, Plaintiffs further allege that, pursuant to Labor Code §§ 558, 558.1,
28 Individual Defendants are liable to the same degree as ENTITY DEFENDANTS for the

violations as alleged in this cause of action.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Cal. Lab. Code § 203)

By Plaintiffs against All Defendants.

70. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully stated here.

71. Pursuant to California Labor Code Section 201, if an employer discharges an employee, the wages earned and unpaid at the time of the discharge are due and payable immediately. Pursuant to California Labor Code Section 202, if an employee quits his or her employment, the wages earned and unpaid at the time of the discharge are due and payable within seventy-two (72) hours of resignation.

72. Plaintiffs were either terminated by Defendants or have resigned from their employment with Defendants. To this day, Plaintiffs have not received all of the wages and other compensation they rightfully earned.

73. Defendants, and each of them, willfully refused and continue to refuse to pay Plaintiffs all wages earned in a timely manner, as required by California Labor Code Section 203. Plaintiff therefore request penalties pursuant to California Labor Code Section 203.

74. Plaintiffs allege that during the relevant statutory period, Individual Defendants were the highest-ranking management employees of ENTITY DEFENDANTS in California. Plaintiffs further allege in that capacity, Individual Defendants were in their respective individual capacities an “other person acting on behalf of an employer” and managing agents of ENTITY DEFENDANTS, who exercised substantial independent authority and judgment, which ultimately resulted in the enforcement of the wrongful corporate policies, which caused the wage and hour violations. Accordingly, Plaintiffs further allege that, pursuant to Labor Code §§ 558, 558.1, Individual Defendants are liable to the same degree as ENTITY DEFENDANTS for the violations as alleged in this cause of action.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(Cal. Lab. Code § 2802)**

4 **By Plaintiffs against All Defendants.**

5 75. Plaintiffs reallege and incorporate by reference each and every allegation
6 contained in the preceding paragraphs as though fully stated here.

7 76. California Labor Code Section 2802 applied to Defendants' employment of
8 Plaintiff. At all relevant times, California Labor Code Section 2802 required an employer to
9 indemnify employees for all expenses that an employee necessarily expends as a direct result of
10 the discharge of his or her employment duties or at the direction of the employer.

11 77. During their employment with Defendants, Plaintiffs were required to pay such
12 business-related expenses incurred during the performance of their job duties. Defendants failed
13 to pay Plaintiffs for these expenditures, including but not limited to the use of their personal cell
14 phones, personal vehicles, and other expenses incurred in the performance of their job duties.

15 78. Defendants failed to pay Plaintiffs for all expenditures that an employee
16 necessarily expended as a result of their employment, and, therefore, violated California Labor
17 Code Section 2802. Accordingly, Plaintiffs are entitled to recover all damages, penalties, all
18 reasonable costs, and other remedies available for violation of California Labor Code Section
19 2802.

20 79. Plaintiffs allege that during the relevant statutory period, Individual Defendants
21 were the highest-ranking management employees of ENTITY DEFENDANTS in California.
22 Plaintiffs further allege in that capacity, Individual Defendants were in their respective individual
23 capacities an "other person acting on behalf of an employer" and managing agents of ENTITY
24 DEFENDANTS, who exercised substantial independent authority and judgment, which ultimately
25 resulted in the enforcement of the wrongful corporate policies, which caused the wage and hour
26 violations. Accordingly, Plaintiffs further allege that, pursuant to Labor Code §§ 558, 558.1,
27 Individual Defendants are liable to the same degree as ENTITY DEFENDANTS for the
28 violations as alleged in this cause of action.

1 **EIGHTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(Cal. Lab. Code §§ 201-203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174,**
4 **1174.5, 1194, 1194.2, 1197, 1197.1, 1199, 2802, 2698, et seq.)**

5 **By Plaintiffs against Defendants**

6 80. Plaintiffs reallege and incorporate by reference each and every allegation
7 contained in the preceding paragraphs as though fully stated here.

8 81. Plaintiffs bring cause of action as a representative action on behalf of themselves,
9 similarly Aggrieved Employees, and the of California in the capacity as a private attorney general
10 pursuant to PAGA.

11 82. PAGA specifically provides for a private right of action to recover civil penalties
12 for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any
13 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
14 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
15 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
16 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
17 former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
18 2699(a).

19 83. Plaintiffs each was employed by Defendants and the Labor Code violations alleged
20 above were committed against him during his time of employment. Plaintiff TRYSTAN LEMUS
21 is therefore, an “aggrieved employee” under PAGA.

22 84. As set forth in detail above, during all times relevant to this Action, Defendants
23 have routinely subjected Plaintiffs and the Aggrieved Employees to various Labor Code
24 violations.

25 85. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiffs each,
26 individually and on behalf of the Aggrieved Employees and the State of California, requests and
27 is entitled to recover penalties against Defendants for the Labor Code violations described above,
28 including but not limited to penalties under California Code of Regulations Title 8 section 11040,

1 penalties under California Labor Code sections 2699, 558, 210, 225.5, 1197.1, 226, 226.3, 1174.5,
2 and 1197.1, and any and all additional penalties and sums as provided by the California Labor
3 Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount to
4 be shown according to proof at trial.

5 86. Plaintiffs have exhausted his administrative remedies pursuant to Labor Code §
6 2699.3. On July 7, 2022, Plaintiff TRYSTAN LEMUS, through his counsel of record, by online
7 filing with the Labor and Workforce Development Agency (“LWDA”) and by certified mail to the
8 Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code and
9 IWC Wage Orders that Defendants have violated, including the facts and theories to support the
10 violations, and of the intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the
11 filing fee required under Labor Code § 2699.3. As of the filing of this Complaint, more than sixty-
12 five (65) days have elapsed since the mailing of the July 7, 2022 notice, and the Labor and
13 Workforce Development Agency has not indicated that it intends to investigate the violations
14 discussed in the notice. Subsequently, a supplemental PAGA letter was filed and served to add
15 the second named plaintiff, AUSTIN BURLESON.

16 87. Plaintiffs were compelled to retain the services of counsel to file this court action
17 to their interests and the Aggrieved Employees, and to assess and collect the civil penalties owed
18 by Defendants. Plaintiff therefore seeks an award of reasonable attorneys’ fees and costs pursuant
19 to Labor Code § 2699(g)(1), and any other applicable statute.

20 **PRAYER FOR RELIEF**

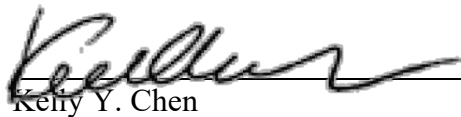
21 **WHEREFORE**, Plaintiffs pray for relief as follows:

- 22 1. That the Court determines 8th Cause of Action be maintained as a representative
23 action;
- 24 2. For payment of all wages owed to Plaintiffs, including, but not limited to, all
25 minimum wages, overtime compensation, and unpaid non-discretionary bonuses;
- 26 3. For payment of all bonus promised by Defendants to Plaintiffs;
- 27 4. For waiting time penalties pursuant to California Labor Code § 203;
- 28 5. For liquidated damages under Labor Code § 1194.2;

- 1 6. For unpaid business expenditures;
- 2 7. For all statutory and civil penalties recoverable by law, including but not limited to
- 3 those available under California Labor Code §§ 204, 210, 225.5, 226, 226.3, 226.7, 512, 558,
- 4 558.1, 1197, 1197.1, 2802, and 2698, *et seq.*;
- 5 8. For interest accrued to date;
- 6 9. For costs of the suit incurred;
- 7 10. For statutory attorney fees and costs pursuant to California Labor Code and all
- 8 other applicable laws; and
- 9 11. For such other and further relief that the Court may deem just and proper.

10 DATED: November 7th, 2022

LAW OFFICE OF KELLY Y. CHEN

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13 Kelly Y. Chen

14 Attorneys for Plaintiffs

TRYSTAN LEMUS and AUSTIN BURLESON

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims and causes of action which may be tried to a jury.

DATED: November 7th, 2022

LAW OFFICE OF KELLY Y. CHEN



Kelly Y. Chen
Attorneys for Plaintiffs
TRYSTAN LEMUS and AUSTIN BURLESON

